

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed	Appeal Number:	2300656
Decision Date:	3/28/2023	Hearing Date:	03/22/2023
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN, Optum

Interpreter: Zully



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Approved in part; Denied in part; Dismissed	Issue:	PCA services
Decision Date:	3/28/2023	Hearing Date:	03/22/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Guardian/mother
Hearing Location:	Quincy Harbor South		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated December 20, 2022, MassHealth modified the appellant's request for prior authorization for 34 hours a week in day/evening personal care attendant (PCA) services and 14 hours a week for a nighttime attendant (NTA), and approved 28.5 hours a week in day/evening PCA services and 14 hours for NTA, because MassHealth determined that time requested for PCA assistance with certain activities of daily living (ADLs) and instrumental activities of daily living (IADLs) did not meet criteria under MassHealth medical necessity and PCA regulations. (see 130 CMR 422.410; 450.204 and Exhibit 1). The appellant filed this appeal in a timely manner on January 24, 2023. (see 130 CMR 610.015(B) and Exhibit 2). By notice dated January 30, 2023, the Board of Hearings (BOH) requested written authorization from the appellant. (Exhibit 3). On February 19, 2023, the appellant's representative submitted a copy of the decree and order of appointment of guardian. (Exhibit 4). Modification of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410 in determining that time requested for PCA assistance with certain activities did not satisfy the criteria set forth in the PCA and medical necessity regulations.

Summary of Evidence

The appellant was represented telephonically at the hearing by her guardian/mother, who testified through an interpreter. The appellant is ■ years old and lives with her mother, who works full time outside of the home. (Exhibit 7, pp. 9, 10). MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for PCA services. The appellant's provider, Northeast ARC, submitted a re-evaluation request for prior authorization for 34 hours per week in day/evening PCA services and 14 hours per week for NTA services on December 7, 2022. (Exhibit 7, p. 3). By notice dated December 20, 2022, MassHealth approved 28.5 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service January 17, 2023 to January 16, 2024. (Testimony, exhibits 1, 7, p. 3). The appellant's diagnoses include West syndrome, developmental delays, behavior issues, cognitive impairment, gait instability, ataxia, history of falls, seizure disorder; when she is upset, the appellant pulls her hair, bites her tongue, and continuously scratches her face. (Exhibit 7, p. 9). The appellant has multiple loose bowel movements every day. (Exhibit 7, p. 10). The appellant's mother testified that the appellant attends school Monday through Friday from 8:15 am to 2:15 pm, and has a half day ending at 11:00 am every other Wednesday.

The MassHealth representative testified that MassHealth modified the time requested for PCA assistance with nail care, other grooming, eating, bladder care, and laundry, and denied the time requested for PCA assistance with housekeeping. After hearing testimony at the hearing, MassHealth approved the requested 5 minutes, twice a day for PCA assistance with other grooming (deodorant and lotion application); approved in full the requested 12 minutes, 3 times a day, 5 days a week and 12 minutes, 4 times a day, 2 days a week for PCA assistance with eating; and approved 10 minutes, 4 times a day, 5 days a week, and 10 minutes, 6 times a day, 2 days a week for PCA assistance with bladder care. MassHealth approved a total of 10 minutes, 6 times a day, 5 days a week for PCA assistance with bladder/bowel care, and 10 minutes 9 times a day, 2 days a week for PCA assistance with bladder/bowel care. (Testimony, exhibit 7, p. 19). The appellant's representative agreed to these adjustments and withdrew the appeal as to these issues. The appeals of the modification of time for PCA assistance with other grooming, eating and bladder care are dismissed.

The issues remaining in dispute are the modification of time requested for PCA assistance with nail care and laundry, and the denial of time requested for PCA assistance with housekeeping. (Testimony).

Nail Care: The appellant's provider requested 20 minutes a week for PCA assistance with nail care. (Exhibit 7, p. 15). MassHealth originally approved 10 minutes, once a week, for PCA assistance

with nail care, but after hearing testimony at the hearing, MassHealth approved 15 minutes a week for PCA assistance with nail care. The MassHealth representative stated that the time requested was longer than ordinarily required for assistance with this task.

The appellant's representative stated that it takes more than 20 minutes a week to cut the appellant's fingernails and toenails. The appellant's representative stated that the appellant has bad hand tremors and is very sensitive to touch so it requires a two person assist with this task. The appellant's representative stated that either she or the appellant's PCA holds the appellant's hands or feet, and the other person cuts the nails. The appellant's representative stated that the appellant's nails need to be cut very short because she scratches her face. The appellant's representative noted that she hasn't timed this task, but it takes longer than 15 minutes.

Laundry: The appellant's provider requested 60 minutes a week for PCA assistance with laundry, and MassHealth approved 30 minutes a week for PCA assistance with this task. (Exhibit 7, p. 26). The nurse evaluator from the provider agency wrote that the appellant cannot assist with laundry in any way and she has excessive clothing and bed linen soiled from bowel and bladder incontinence, which must be washed separately. (Exhibit 7, p. 26).

The MassHealth representative stated that because the appellant lives with her mother, laundry is the responsibility of the family member. The MassHealth representative stated that 30 minutes was approved based on the need for assistance with extra laundry. The MassHealth representative stated that 30 minutes a week for PCA assistance with laundry was approved last year.

The appellant's representative stated that the appellant has accidents and soils her clothing and laundry needs to be done every day.

Housekeeping: The appellant's provider requested 30 minutes a week for PCA assistance with housekeeping and MassHealth denied the request. (7, p. 26). The nurse evaluator from the provider agency wrote that the appellant is dependent for housekeeping in her personal space, bathroom, and kitchen after use. (Exhibit 7, p. 26).

The MassHealth representative stated that pursuant to MassHealth regulations, when a member lives with family members, the family members are expected to provide assistance with routine housekeeping. The MassHealth representative noted that the no time was approved for PCA assistance with housekeeping last year.

The appellant's representative testified that the appellant is ■ years old and cannot assist with cleaning up after herself in any way.

The appellant's representative submitted a letter from the appellant's physician and a copy of the PCA request submitted by the appellant's provider, which was received by the hearing officer subsequent to the hearing. (Exhibit 8). The documents were forwarded to the MassHealth representative. The physician letter dated January 11, 2023 states that as a result of the appellant's multiple diagnoses, she cannot complete ADLs and requires extensive assistance. (Exhibit 8). The appellant's physician states further that she supports the request for extended PCA hours to ensure

that the appellant and her mother receive appropriate assistance at home. (Exhibit 8).

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is ■ years old and lives with her mother, who works full time outside of the home.
2. The appellant's provider, Northeast ARC, submitted a re-evaluation request for prior authorization for 34 hours per week in day/evening PCA services and 14 hours per week for NTA services on December 7, 2022.
3. By notice dated December 20, 2022, MassHealth approved 28.5 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service January 17, 2023 to January 16, 2024.
4. The appellant's diagnoses include West syndrome, developmental delays, behavior issues, cognitive impairment, gait instability, ataxia, history of falls, seizure disorder; when she is upset, the appellant pulls her hair, bites her tongue, and continuously scratches her face; the appellant has multiple loose bowel movements every day.
5. The appellant attends school Monday through Friday from 8:15 am to 2:15 pm, and has a half day ending at 11:00 am every other Wednesday.
6. MassHealth modified the time requested for PCA assistance with nail care, other grooming, eating, bladder care, and laundry, and denied the time requested for PCA assistance with housekeeping.
7. After hearing testimony at the hearing, MassHealth approved the requested time for PCA assistance with other grooming and eating, and approved 10 minutes, 4 times a day, 5 days a week, and 10 minutes, 6 times a day, 2 days a week for PCA assistance with bladder care, for a total of 10 minutes, 6 times a day, 5 days a week for PCA assistance with bladder/bowel care, and 10 minutes 9 times a day, 2 days a week for PCA assistance with bladder/bowel care.
8. The appellant's representative agreed to the adjustments made at the hearing and withdrew the appeals of the time approved for PCA assistance with other grooming, eating and bladder care.
9. The appellant's provider requested 20 minutes a week for PCA assistance with nail care.
10. MassHealth originally approved 10 minutes, once a week, for PCA assistance with nail care, but after hearing testimony at the hearing, MassHealth approved 15 minutes a week for PCA assistance with nail care.

11. The appellant has bad hand tremors and is very sensitive to touch so it requires a two person assist with this task; either the appellant's mother or the appellant's PCA holds the appellant's hands or feet, and the other person cuts the nails; the appellant's nails need to be cut very short because she scratches her face.
12. The appellant's provider requested 60 minutes a week for PCA assistance with laundry, and MassHealth approved 30 minutes a week for PCA assistance with this task.
13. The appellant cannot assist with laundry in any way and she has excessive clothing and bed linen soiled from bowel and bladder incontinence, which must be washed separately.
14. The appellant's provider requested 30 minutes a week for PCA assistance with housekeeping and MassHealth denied the request.
15. The appellant is dependent for housekeeping in her personal space, bathroom, and in the kitchen.

Analysis and Conclusions of Law

MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
- 2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to MassHealth. Services that are less costly to MassHealth include, but are not limited to,

health care reasonably known by the provider or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A)-(C)).

Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) dressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel or bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the

PCM agency must assume the following.

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
- (2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(130 CMR 422.410).

Noncovered Services: MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

(130 CMR 422.412).

After hearing testimony at the hearing, MassHealth approved the requested time for PCA assistance with other grooming and eating, and approved 10 minutes, 4 times a day, 5 days a week, and 10 minutes, 6 times a day, 2 days a week for PCA assistance with bladder care. The appellant's representative did not dispute such time and withdrew the appeal of MassHealth's approval of time for PCA assistance with other grooming, eating, and bladder care. Because these issues resolved at hearing, the appeal is dismissed as to these issues. (130 CMR 610.035(A)(2), (8)).

MassHealth modified the time requested for PCA assistance with nail care and laundry, and denied the time requested for PCA assistance with housekeeping.

MassHealth approved 15 minutes a week for PCA assistance with nail care. The appellant is sensitive to touch and has hand tremors so her mother and the PCA have to complete this task together, with one holding the appellant's hand or foot while the other clips the nails. This is a weekly task and should take no more than 15 minutes, especially since two people are performing

the task. It should not take a full minute to clip one fingernail or toenail. The appellant's representative noted that she has not timed this task. 15 minutes is a reasonable amount of time to clip 20 nails. MassHealth's modification of time requested for PCA assistance with nail care is upheld and the appeal is denied as to this issue.

MassHealth approved 30 minutes a week for PCA assistance with the appellant's extra laundry. When a member is living with family members, the family members will provide assistance with IADLs such as laundry. Routine laundry should include those needs of the member. (130 CMR 422.410(C)(1)). The appellant lives with her mother and her mother's routine laundry should include the needs of the appellant. The appellant has bladder and bowel incontinence which sometimes results in accidents that soil her clothes and bed linens. The appellant's representative testified that these accidents result in the need for daily laundering. If the soiled clothes/linen are washed on the day the accident happens, that would be a very small load. It would take less than a minute to place the clothes/linens into the washing machine, a minute to transfer the clothes to the dryer, and should only take a minute to fold one set of soiled clothes and/or bed linens. MassHealth approved 30 minutes a week for PCA assistance with the appellant's extra laundry and such time calculates into a little more than 4 minutes a day. Such time is sufficient for the small load that results from the appellant's accidents. Further PCA assistance with toileting was approved for 6 times a day on school days and 9 times a day on weekends and vacations and this assistance should be keeping incontinence accidents to a minimum. MassHealth's modification of time requested for PCA assistance with laundry is upheld and the appeal is denied as to this issue.

MassHealth denied the appellant's request for 30 minutes a week of PCA assistance with housekeeping. The appellant is [REDACTED] years old and cannot assist with housekeeping in any way. Although the appellant's mother's routine housekeeping should include those needs of the appellant, the appellant would be responsible for making her bed, cleaning her room and bathroom, and picking up after herself. Because the appellant cannot perform these tasks on her own, they are appropriate PCA tasks. 30 minutes a week for PCA assistance with the appellant's housekeeping needs, such as making the bed and cleaning the bathroom, is reasonable and MassHealth's denial is overturned. The appeal is approved as to MassHealth's denial of time requested for PCA assistance with housekeeping. MassHealth shall approve the requested 30 minutes per week for PCA assistance with housekeeping.

Order for MassHealth

If MassHealth has not already done so, make the adjustment agreed to at the hearing for PCA assistance with other grooming, eating, and bladder care; approve in full the time requested for PCA assistance with housekeeping; adjustments are retroactive to January 17, 2023.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA
02215